

AMENDED IN ASSEMBLY MAY 14, 2007

AMENDED IN ASSEMBLY MAY 3, 2007

AMENDED IN ASSEMBLY APRIL 16, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1687

Introduced by Assembly Member Brownley

February 23, 2007

An act to amend Section 56.10 of the Civil Code, relating to confidential information.

LEGISLATIVE COUNSEL’S DIGEST

AB 1687, as amended, Brownley. Mental health and developmental services: confidential information.

(1) Existing law prohibits a provider of health care, a health care service plan, contractor, or corporation and its subsidiaries and affiliates from intentionally sharing, selling, or otherwise using any medical information, as defined, for any purpose not necessary to provide health care services to a patient, except as expressly authorized by the patient, enrollee, or subscriber, as specified, or as otherwise required or authorized by law. Existing law also permits that medical information to be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. Existing law provides that a violation of these provisions that results in economic loss or personal injury to a patient is punishable as a misdemeanor. Existing federal law defines “covered entity” for purposes of the federal Health Insurance Portability and Accountability Act.

This bill would provide that these provisions apply to a psychotherapist, as defined. By expanding the definition of a crime, the bill would impose a state-mandated local program. The bill would also permit a *covered entity who is a psychotherapist* to use or disclose protected health information if the covered entity, in good faith, believes the use or disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and if ~~other specified requirements apply~~ *the use or disclosure is to a person reasonably able to prevent or lessen that threat*. The bill would also provide that for purposes of these provisions, treatment shall include the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination of management of health care by a health care provider with a third party, consultation between health care providers relating to a patient, or the referral of a patient for health care for one health care provider to another.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:

3 (1) The State of California is responsible for the health care
4 needs of children and youth who have been removed from their
5 homes due to abuse, neglect, or delinquency, and for ensuring that
6 their health and mental health needs are met. Access to health and
7 mental health records is essential for ensuring that health and
8 mental health needs of foster children and youth are being met.

9 (2) A lack of clarity about who may be authorized to share health
10 and mental health records with caregivers of children and youth
11 in the state's care often results in inadequate health care
12 information being available to caregivers, which jeopardizes the
13 health of the children and youth in the state's care.

(b) It is the intent of the Legislature to improve the sharing of health and mental health information concerning children and youth in the state's care by eliminating barriers caused by a lack of clarity in the law regarding who may be authorized to share health and mental health information. It is further the intent of the Legislature not to expand existing state law and to clarify that existing state confidentiality of medical records law and the federal Health Insurance Portability and Accountability Act (HIPAA) authorizes psychotherapists to provide health and mental health information to caregivers of children and youth in foster care to facilitate providing health and mental health care that meets their needs.

SEC. 2. Section 56.10 of the Civil Code is amended to read:

56.10. (a) A provider of health care, psychotherapist defined in Section 1010 of the Evidence Code, health care service plan, or contractor shall not disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, psychotherapist defined in Section 1010 of the Evidence Code, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

1 (6) By a search warrant lawfully issued to a governmental law
2 enforcement agency.

3 (7) By the patient or the patient's representative pursuant to
4 Chapter 1 (commencing with Section 123100) of Part 1 of Division
5 106 of the Health and Safety Code.

6 (8) By a coroner, when requested in the course of an
7 investigation by the coroner's office for the purpose of identifying
8 the decedent or locating next of kin, or when investigating deaths
9 that may involve public health concerns, organ or tissue donation,
10 child abuse, elder abuse, suicides, poisonings, accidents, sudden
11 infant deaths, suspicious deaths, unknown deaths, or criminal
12 deaths, or when otherwise authorized by the decedent's
13 representative. Medical information requested by the coroner under
14 this paragraph shall be limited to information regarding the patient
15 who is the decedent and who is the subject of the investigation and
16 shall be disclosed to the coroner without delay upon request.

17 (9) When otherwise specifically required by law.

18 (c) A provider of health care, psychotherapist as defined in
19 Section 1010 of the Evidence Code, or a health care service plan
20 may disclose medical information as follows:

21 (1) The information may be disclosed to providers of health
22 care, health care service plans, contractors, or other health care
23 professionals or facilities for purposes of diagnosis or treatment
24 of the patient. This includes, in an emergency situation, the
25 communication of patient information by radio transmission or
26 other means between emergency medical personnel at the scene
27 of an emergency, or in an emergency medical transport vehicle,
28 and emergency medical personnel at a health facility licensed
29 pursuant to Chapter 2 (commencing with Section 1250) of Division
30 2 of the Health and Safety Code. Treatment includes the provision,
31 coordination, or management of health care and related services
32 by one or more health care providers, including the coordination
33 or management of health care by a health care provider with a third
34 party, consultation between health care providers relating to a
35 patient, or the referral of a patient for health care from one health
36 care provider to another.

37 (2) The information may be disclosed to an insurer, employer,
38 health care service plan, hospital service plan, employee benefit
39 plan, governmental authority, contractor, or any other person or
40 entity responsible for paying for health care services rendered to

1 the patient, to the extent necessary to allow responsibility for
2 payment to be determined and payment to be made. If (A) the
3 patient is, by reason of a comatose or other disabling medical
4 condition, unable to consent to the disclosure of medical
5 information and (B) no other arrangements have been made to pay
6 for the health care services being rendered to the patient, the
7 information may be disclosed to a governmental authority to the
8 extent necessary to determine the patient's eligibility for, and to
9 obtain, payment under a governmental program for health care
10 services provided to the patient. The information may also be
11 disclosed to another provider of health care or health care service
12 plan as necessary to assist the other provider or health care service
13 plan in obtaining payment for health care services rendered by that
14 provider of health care or health care service plan to the patient.

15 (3) The information may be disclosed to a person or entity that
16 provides billing, claims management, medical data processing, or
17 other administrative services for providers of health care or health
18 care service plans or for any of the persons or entities specified in
19 paragraph (2). Information disclosed pursuant to this paragraph
20 shall not be further disclosed by the recipient in any way that would
21 violate this part.

22 (4) The information may be disclosed to organized committees
23 and agents of professional societies or of medical staffs of licensed
24 hospitals, licensed health care service plans, professional standards
25 review organizations, independent medical review organizations
26 and their selected reviewers, utilization and quality control peer
27 review organizations as established by Congress in Public Law
28 97-248 in 1982, contractors, or persons or organizations insuring,
29 responsible for, or defending professional liability that a provider
30 may incur, if the committees, agents, health care service plans,
31 organizations, reviewers, contractors, or persons are engaged in
32 reviewing the competence or qualifications of health care
33 professionals or in reviewing health care services with respect to
34 medical necessity, level of care, quality of care, or justification of
35 charges.

36 (5) The information in the possession of a provider of health
37 care or health care service plan may be reviewed by a private or
38 public body responsible for licensing or accrediting the provider
39 of health care or health care service plan. Patient-identifying
40 medical information may not be removed from the premises except

1 as expressly permitted or required elsewhere by law, and that
2 information shall not be further disclosed by the recipient in any
3 way that would violate this part.

4 (6) The information may be disclosed to the county coroner in
5 the course of an investigation by the coroner's office when
6 requested for all purposes not included in paragraph (8) of
7 subdivision (b).

8 (7) The information may be disclosed to public agencies, clinical
9 investigators, including investigators conducting epidemiologic
10 studies, health care research organizations, and accredited public
11 or private nonprofit educational or health care institutions for bona
12 fide research purposes. Information disclosed pursuant to this
13 paragraph shall not be further disclosed by the recipient in any
14 way that would disclose the identity of a patient or violate this
15 part.

16 (8) A provider of health care or health care service plan that has
17 created medical information as a result of employment-related
18 health care services to an employee conducted at the specific prior
19 written request and expense of the employer may disclose to the
20 employee's employer that part of the information that:

21 (A) Is relevant in a lawsuit, arbitration, grievance, or other claim
22 or challenge to which the employer and the employee are parties
23 and in which the patient has placed in issue his or her medical
24 history, mental or physical condition, or treatment, provided that
25 information may only be used or disclosed in connection with that
26 proceeding.

27 (B) Describes functional limitations of the patient that may
28 entitle the patient to leave from work for medical reasons or limit
29 the patient's fitness to perform his or her present employment,
30 provided that a statement of medical cause is not included in the
31 information disclosed.

32 (9) Unless the provider of health care or health care service plan
33 is notified in writing of an agreement by the sponsor, insurer, or
34 administrator to the contrary, the information may be disclosed to
35 a sponsor, insurer, or administrator of a group or individual insured
36 or uninsured plan or policy that the patient seeks coverage by or
37 benefits from, if the information was created by the provider of
38 health care or health care service plan as the result of services
39 conducted at the specific prior written request and expense of the

1 sponsor, insurer, or administrator for the purpose of evaluating the
2 application for coverage or benefits.

3 (10) The information may be disclosed to a health care service
4 plan by providers of health care that contract with the health care
5 service plan and may be transferred among providers of health
6 care that contract with the health care service plan, for the purpose
7 of administering the health care service plan. Medical information
8 may not otherwise be disclosed by a health care service plan except
9 in accordance with the provisions of this part.

10 (11) This part shall not prevent the disclosure by a provider of
11 health care or a health care service plan to an insurance institution,
12 agent, or support organization, subject to Article 6.6 (commencing
13 with Section 791) of Part 2 of Division 1 of the Insurance Code,
14 of medical information if the insurance institution, agent, or support
15 organization has complied with all requirements for obtaining the
16 information pursuant to Article 6.6 (commencing with Section
17 791) of Part 2 of Division 1 of the Insurance Code.

18 (12) The information relevant to the patient's condition and care
19 and treatment provided may be disclosed to a probate court
20 investigator engaged in determining the need for an initial
21 conservatorship or continuation of an existent conservatorship, if
22 the patient is unable to give informed consent, or to a probate court
23 investigator, probation officer, or domestic relations investigator
24 engaged in determining the need for an initial guardianship or
25 continuation of an existent guardianship.

26 (13) The information may be disclosed to an organ procurement
27 organization or a tissue bank processing the tissue of a decedent
28 for transplantation into the body of another person, but only with
29 respect to the donating decedent, for the purpose of aiding the
30 transplant. For the purpose of this paragraph, the terms "tissue
31 bank" and "tissue" have the same meaning as defined in Section
32 1635 of the Health and Safety Code.

33 (14) The information may be disclosed when the disclosure is
34 otherwise specifically authorized by law, including, but not limited
35 to, the voluntary reporting, either directly or indirectly, to the
36 federal Food and Drug Administration of adverse events related
37 to drug products or medical device problems.

38 (15) Basic information, including the patient's name, city of
39 residence, age, sex, and general condition, may be disclosed to a

1 state or federally recognized disaster relief organization for the
2 purpose of responding to disaster welfare inquiries.

3 (16) The information may be disclosed to a third party for
4 purposes of encoding, encrypting, or otherwise anonymizing data.
5 Information disclosed pursuant to this paragraph shall not be further
6 disclosed by the recipient in any way that would violate this part,
7 including the unauthorized manipulation of coded or encrypted
8 medical information that reveals individually identifiable medical
9 information.

10 (17) For purposes of disease management programs and services
11 as defined in Section 1399.901 of the Health and Safety Code,
12 information may be disclosed as follows: (A) to an entity
13 contracting with a health care service plan or the health care service
14 plan's contractors to monitor or administer care of enrollees for a
15 covered benefit, if the disease management services and care are
16 authorized by a treating physician, or (B) to a disease management
17 organization, as defined in Section 1399.900 of the Health and
18 Safety Code, that complies fully with the physician authorization
19 requirements of Section 1399.902 of the Health and Safety Code,
20 if the health care service plan or its contractor provides or has
21 provided a description of the disease management services to a
22 treating physician or to the health care service plan's or contractor's
23 network of physicians. Nothing in this paragraph shall be construed
24 to require physician authorization for the care or treatment of the
25 adherents of a well-recognized church or religious denomination
26 who depend solely upon prayer or spiritual means for healing in
27 the practice of the religion of that church or denomination.

28 (18) The information may be disclosed, as permitted by state
29 and federal law or regulation, to a local health department for the
30 purpose of preventing or controlling disease, injury, or disability,
31 including, but not limited to, the reporting of disease, injury, vital
32 events, including, but not limited to, birth or death, and the conduct
33 of public health surveillance, public health investigations, and
34 public health interventions, as authorized or required by state or
35 federal law or regulation.

36 (d) A covered entity as defined in Section 160.103 of Title 45
37 of the Code of Federal Regulations who is a psychotherapist as
38 defined in Section 1010 of the Evidence Code may, consistent
39 with applicable law and standards of ethical conduct, use or
40 disclose protected health information if the covered entity, in good

1 faith, believes the use or disclosure is necessary to prevent or lessen
2 a serious and imminent threat to the health or safety of a person
3 or the public and either of the following apply:

4 (1) ~~The~~ *the* use or disclosure is to a person reasonably able to
5 prevent or lessen that threat, including, but not limited to, the target
6 of the threat.

7 (2) ~~The use or disclosure is necessary for law enforcement~~
8 ~~authorities to identify or apprehend an individual when either of~~
9 ~~the following apply:~~

10 (A) ~~The covered entity reasonably believes that because of a~~
11 ~~statement by an individual who admits participating in a violent~~
12 ~~crime, the individual may have caused serious physical harm to~~
13 ~~the victim.~~

14 (B) ~~It appears from all the circumstances that the individual has~~
15 ~~escaped from a correctional institution or from lawful custody as~~
16 ~~those terms are defined in Section 164.501 of Title 45 of the Code~~
17 ~~of Federal Regulations.~~

18 (e) Except to the extent expressly authorized by the patient or
19 enrollee or subscriber or as provided by subdivisions (b) and (c),
20 a provider of health care, health care service plan, contractor, or
21 corporation and its subsidiaries and affiliates shall not intentionally
22 share, sell, use for marketing, or otherwise use any medical
23 information for any purpose not necessary to provide health care
24 services to the patient.

25 (f) Except to the extent expressly authorized by the patient or
26 enrollee or subscriber or as provided by subdivisions (b) and (c),
27 a contractor or corporation and its subsidiaries and affiliates shall
28 further disclose medical information regarding a patient of the
29 provider of health care or an enrollee or subscriber of a health care
30 service plan or insurer or self-insured employer received under
31 this section to a person or entity that is not engaged in providing
32 direct health care services to the patient or his or her provider of
33 health care or health care service plan or insurer or self-insured
34 employer.

35 SEC. 3. No reimbursement is required by this act pursuant to
36 Section 6 of Article XIII B of the California Constitution because
37 the only costs that may be incurred by a local agency or school
38 district will be incurred because this act creates a new crime or
39 infraction, eliminates a crime or infraction, or changes the penalty
40 for a crime or infraction, within the meaning of Section 17556 of

- 1 the Government Code, or changes the definition of a crime within
- 2 the meaning of Section 6 of Article XIII B of the California
- 3 Constitution.

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